

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

JOSE ARMANDO CRUZ-GUTIERREZ,

Petitioner,

v.

Civil Action No. 1:18-cv-155
(Judge KleeH)

JOE COAKLEY,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 13] AND
DISMISSING THE PETITION AS MOOT [DKT. NO. 1]**

On August 13, 2018, the pro se Petitioner, Jose Armando Cruz-Gutierrez ("Petitioner"), an inmate at FCI Hazelton in Bruceton Mills, West Virginia, filed a petition in this action pursuant to 28 U.S.C. § 2241 [Dkt. No. 1] challenging a prison disciplinary proceeding that he alleged was not conducted within five (5) working days of the issuance of an Incident Report, as required by Bureau of Prison ("BOP") P.S. 5270.09.

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On April 23, 2019, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss the petition as moot because Petitioner was released from BOP custody on January 3, 2019 [Dkt. No. 13 at 3].

The R&R also informed the parties that they had "fourteen

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days (filing of objections) and then three days (mailing/service), from the date of filing this Report and Recommendation" within which to file "specific written objections identifying the portions of the Recommendation to which objection is made, and the basis of such objection" [Dkt. No. 13 at 4]. It further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals" [*Id.*]. The docket reflects that service of the R&R was accepted on April 27, 2019 [Dkt. No. 14]. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has filed objections in this matter, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. This

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Court agrees with the R&R findings that the petition and requested relief are moot because Petitioner was released from custody on January 3, 2019. Accordingly, upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [Dkt. No. 13]. The § 2241 Petition [Dkt. No. 1] is **DISMISSED AS MOOT**. The Court further **ORDERS** that this matter be **STRICKEN** from the Court's active docket and **DIRECTS** the Clerk to enter judgment in favor of Respondent.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to the pro se Petitioner via certified mail, return receipt requested.

DATED: July 2, 2021

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE